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IN THE

Supreme Court of the United States

October Term, 1972

No. 72-1023

CURTIS THOMAS,
Petitioner,

v.

STATE OF WASHINGTON,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION ONE

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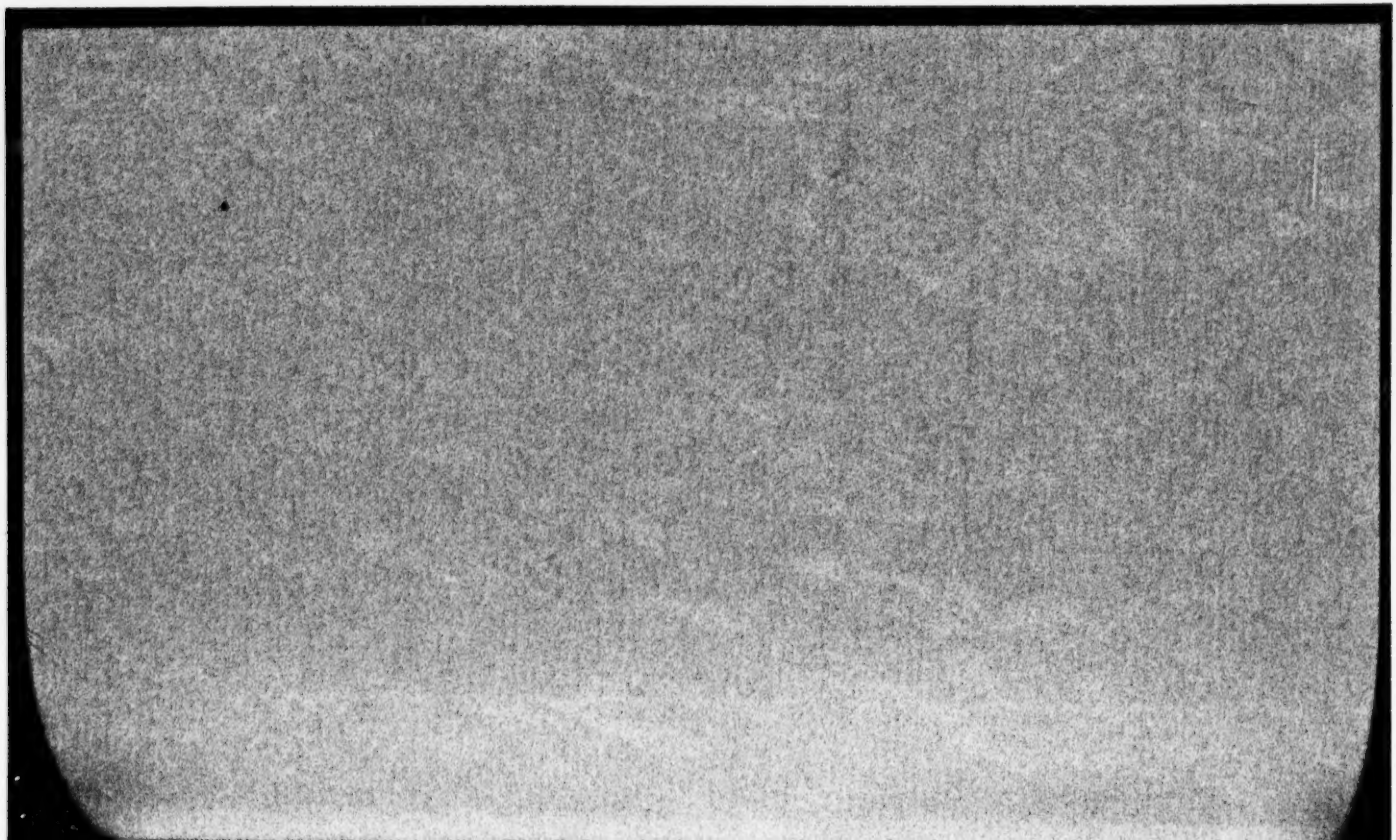

SUBJECT INDEX

Page

I. Citation To Opinion Below 1

II. Jurisdiction 2

III. Question Presented 2

IV. Constitutional Provisions Involved 2

V. Statement Of The Case 3

A. Procedural Background 3

B. Factual Background 5

VI. Reasons For Granting The Writ 6

1. The Decision of the Court Below Is In Conflict With Applicable Decisions of This Court 6

2. This Case Involves a Question of Exceptional Importance 12

3. This Case Should Be Heard With *Cady v. Dombrowski*, Docket No. 72-586 12

VII. Conclusion 13

Appendices:

Appendix A Opinion Division I, Panel II A-1

Appendix B Motion and Affidavit To Suppress Evidence A-5

Appendix C Judgment And Sentence A-6

Appendix D Order Denying Petition For Rehearing A-8

Appendix E Order Denying Petition For Review A-9

Appendix F Remittitur A-10

Appendix G Affidavit of Ross Carmen A-12

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TABLES OF AUTHORITY

Table of Cases

	Page
Cady v. Dombrowski, Docket No. 72-586	13
Camara v. Municipal Court, 387 U.S. 523 (1967)	8
Coolidge v. New Hampshire, 403 U.S. 443, 29 L.Ed.2d 564, 91 S.Ct. 2022 (June 21, 1971)	7, 9, 10, 12
See v. City of Seattle, 387 U.S. 541 (1967)	8, 9
State v. Jones, 2 Wn.App. 627, 472 P.2d 402 (1970)	8
State v. Montague, 73 Wn.2d 381, 438 P.2d 571 (1968)	8
U.S. v. U.S. District Court for the Eastern District of Michigan, Southern Division, ... U.S. ....., 32 L.Ed.2d 752, 92 S.Ct. 2125 (June 19, 1972)	7, 9, 10-12

Constitutional Provisions

United States Constitution, Amendment IV 2, 8, 12

Amendment XIV 2-3, 12

Statutes

RCW 9.54.010(5) 3

28 USC § 1257(3) 2

Other Authorities

Rule 22(1) 2

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No.....

CURTIS THOMAS,
Petitioner,

v.

STATE OF WASHINGTON,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION ONE

The Petitioner, Curtis Thomas, respectfully prays that a writ of certiorari be issued to review the Opinion and Judgment of Division One of the Court of Appeals of the State of Washington entered in "State of Washington, Respondent, v. Curtis Thomas, Appellant," Docket No. 879-I, on May 30, 1972.

I.

CITATION TO OPINION BELOW

The Opinion of Division One of the Court of Appeals of the State of Washington is printed in Appendix A hereto, *infra*, pp. A-1 to A-4. The opinion is not reported.

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II.

JURISDICTION

The jurisdiction of this Court is invoked under Title 28, USC §1257 (3) and Rule 22 (1) of this Court.

III.

QUESTION PRESENTED

Whether city police violated Petitioner's rights under the Fourth and Fourteenth Amendments to the Constitution of the United States by searching the trunk and seizing material from the trunk of Petitioner's car without a warrant and without Petitioner's consent after Petitioner had been arrested on a traffic offense and at a time when the car was impounded by the police who purported to justify such search and seizure as an inventory search to recover and protect property of the Petitioner?

IV.

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT IV TO THE UNITED STATES CONSTITUTION

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

AMENDMENT XIV TO THE UNITED STATES CONSTITUTION

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State

wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

V.

STATEMENT OF THE CASE

A. Procedural Background

An information was filed against Petitioner in the Superior Court of the State of Washington for King County on July 27, 1970 charging the Petitioner with knowing possession of stolen property in violation of RCW 9.54.010 (5) (Tr. 5).

On September 15, 1970 Petitioner's trial counsel moved to suppress the evidence obtained by the police when they searched the trunk of Petitioner's vehicle and all other evidence. A copy of the Motion and Affidavit to Suppress Evidence is printed in Appendix B hereto, *infra*, p. A-5.

The case was tried to the court on September 28 and 29, 1970. The court on that date took testimony with respect to Petitioner's Motion to Suppress (St. 1-32). The motion to suppress was denied (St. 32). The trial court found the Petitioner guilty as charged at the conclusion of the trial on September 29, 1970 (St. 80).

Findings of Fact and Conclusions of Law were signed by the court on October 8, 1970. The Findings included the following:

"That on or about the 22nd day of April, 1970, the defendant did receive or aid in concealing or with-

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> holding certain personal property, to-wit: 4 ladies double knit suits, which had been wrongfully appropriated from Wholesale Liquidators in such a manner as to constitute larceny;" (Tr. 3)

Judgment and sentence were entered on November 30, 1970, sentencing the Petitioner to imprisonment for a maximum term of not more than 15 years. The Judgment and Sentence is printed in Appendix C hereto, *infra*, pp. A-6 to A-7.

An appeal was timely taken to Division One of the Court of Appeals of the State of Washington. Petitioner set out in his Brief of Appellant the following Assignment of Error:

> "1. The court erred in denying the defendant's motion to suppress the evidence and thereafter admitting Exhibits 2 through 7 without which defendant claims there would be no sufficient evidence to support a finding of guilty and the subsequent conviction thereon of the crime charged." (*Brief of Appellant*, p. 2)

The Assignment of Error was argued in the Brief of Appellant at pages 3 and 4. The Court of Appeals decided the search and seizure issue adversely to Petitioner as indicated in the copy of the Opinion in Appendix A hereto at pages A-1 to A-4.

Petitioner filed a Petition for Rehearing before Division One of the Court of Appeals of the State of Washington, which petition for rehearing was denied on September 5, 1972. A copy of the Order denying the Petition for Rehearing is printed in Appendix D hereto, *infra*, p. A-8.

A Petition for Review raising the question here presented was filed with the Supreme Court of the State of Washington and denied by that court by order entered on

October 26, 1972. A copy of the Order denying the petition for review is printed in Appendix E hereto, *infra*, p. A-9. Thereafter, Division One of the Court of Appeals transmitted the remittitur to the King County Superior Court in its Cause No. 54535 on November 20, 1972. The remittitur is printed in Appendix F hereto, *infra*, pages A-10 to A-11.

B. Factual Background

The bulk of the significant facts are recited in the Opinion of the Court of Appeals of the State of Washington. Petitioner was legally arrested for a traffic violation in the city of Seattle shortly after midnight on April 22, 1970. Petitioner was placed under arrest and placed in custody. Neither of the two passengers in Petitioner's care had a valid driver's license. The police observed on the dashboard of the car a credit card bearing a name other than that of the defendant or either of the two passengers in the car. The police also noticed numerous jewelry price tags in the car. The police then decided to impound the vehicle and tow it to a parking lot for storage. The Petitioner was taken to jail. The officers remaining at the scene searched the vehicle including the trunk of the car. The car was later searched at police impound. Four new ladies double knit suits were found in the trunk of the vehicle and seized by the police at the police impound area (St. 63, 64; Opinion, Appendix, p. A-1).

Petitioner while in custody on the day of his arrest and on the following day was asked by Seattle police officers where the women's suits were obtained. Petitioner indicated that the suits were obtained from Sweaterland in Los Angeles, California (St. 36, 37). While the Petitioner was

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still in custody, a Seattle merchant was shown the clothing and identified it as clothing taken from her in a recent burglary (St. 55).

The court admitted into evidence the women's clothing (Ex. 2 thru 7 identified at St. 43, 44 and 50 and admitted into evidence at St. 73). The court also admitted into evidence the oral statement of Petitioner that the women's clothing had been purchased by him at Sweaterland in Los Angeles, California (St. 36-38).

The police attempted to justify the search and seizure on the grounds that the search was an inventory search and the seizure was to take the property into custody for safekeeping. See the Affidavit of Ross Carmen, Appendix G, *infra*, pages A-12 to A-13. The Court of Appeals approved the search and seizure on the grounds that the search was a proper "inventory search."

It is undisputed that both the car and the Petitioner were in the custody of the police a sufficient length of time to permit the police to apply to a court for a warrant authorizing the search of the trunk of the vehicle and the seizure of its contents.

VI.

REASONS FOR GRANTING THE WRIT

1. The Decision of the Court Below Is In Conflict With Applicable Decisions of This Court

The two most recent cases decided by this Court in the area of search and seizure point inescapably to the conclusion that the court below erred when it failed to reverse Petitioner's conviction on the grounds that the trial court admitted into evidence against the Petitioner evi-

dence obtained as a result of an unlawful search and seizure of the contents of the trunk of Petitioner's car. *Coolidge v. New Hampshire,* 403 U.S. 443, 29 L.Ed.2d 564, 91 S. Ct. 2022, decided June 21, 1971, and *U.S. v. U.S. District Court for the Eastern District of Michigan, Southern Division,* ..... U.S. ....., 32 L.Ed.2d 752, 92 S. Ct. 2125, decided June 19, 1972.

Coolidge, supra, is nearly on all fours factually and legally with the case at bar. The defendant in *Coolidge* was convicted of murder in state court. The police had ample probable cause to arrest the defendant and probable cause to believe that a 1951 Pontiac owned by the defendant might have been used in the commission of the crime and might contain evidence material to the case. The police seized the defendant's car at the time of arresting the defendant at his home. The car was towed to the police station and searched on two occasions without a valid warrant. In a 5-4 decision, this Court held the search to be invalid and reversed the defendant's conviction.

The facts in the case at bar are identical to those of *Coolidge, supra,* with the exception that the defendant here was charged with possession of stolen property, namely, the 4 suits of women's clothing which the police found they made the search and, in the case at bar, the police attempted to justify the search as a so-called "inventory search."

The rationale of the majority in *Coolidge, supra,* was that a search warrant must be obtained in advance of the search and seizure unless it is not reasonably practicable to do so. The Court noted that the vehicle was under the control of the police as the police had impounded the car. Therefore, there was ample opportunity to obtain a war-

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rant before the search and seizure. Of course, the identical opportunity to apply for a warrant exists in the case at bar.

The court below sustained the search and seizure of the contents of the trunk of the car on the grounds that the same was a proper inventory search. In doing so, the court cited *State v. Montague,* 73 Wn.2d 381, 438 P.2d 571 (1968), and *State v. Jones,* 2 Wn. App. 627, 472 P.2d 402 (1970). Both of these cases pre-date the two decisions of this Court cited herein. This Court has not given constitutional blessings to so-called inventory searches and seizures when the search and seizure was not conducted upon the request of or with the consent of the person whose property the police purportedly sought to protect. The reason this blessing has not been granted is that the Fourth Amendment prohibits even this kind of invasion of privacy without the consent of the owner. It also provides a convenient rationalization for police officers to undertake a search without a warrant.

This Court has held that the Fourth Amendment warrant requirement applies to so-called non-criminal searches. *Camara v. Municipal Court,* 387 U.S. 523 (1967), and *See v. City of Seattle,* 387 U.S. 541 (1967). Both of these cases involve building inspections. In each of these cases, the City argued that Fourth Amendment protection is not extended to inspections or searches which do not have as their objective the seeking of evidence of criminal action. The argument was rejected by this Court. In doing so, this Court noted:

> "It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior." *Camara, supra,* page 530.

This does not mean that state authority to search may not be exercised unless state officials have probable cause to believe that a search will produce evidence of criminal activity. Indeed, this Court indicated in both cases that non-criminal searches are justified but that such a search may only be conducted after obtaining a warrant specifying the need and the governmental interest to be protected:

> "The warrant procedure is designed to guarantee that a decision to search private property is justified by a reasonable governmental interest. But reasonableness is still the ultimate standard. If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant." *Camara, supra,* page 539.

The rule in *Coolidge, supra,* and *U.S. v. U.S. District Court, supra,* still applies: A search warrant must be obtained in advance of any search or seizure unless exigent circumstances render it impracticable to apply for a warrant.

The stated rationalization for inventory searches is that the city or state must make the inventory search in order to protect itself from liability for the loss of items which may not be placed in safekeeping without an inventory search. There are two obvious answers to this. The first is that the police should have made a request of the person whose property they were attempting to protect. Upon refusal, no liability could attach to the city. The second and even better answer is that the city can incur no liability because of its failure to conduct a search that is constitutionally prohibited.

There is also strong reason in the case at bar to believe that the police officers here were searching for evidence of

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the commission of a crime. They knew one of the occupants of the car had been charged with a crime (St. 10, 11). The police had found a credit card which had been reported as stolen and price tags from jewelry were strewn about the car (St. 6, 15). The report made up by the police officers at the time stated "for suspicion of larceny" (St. 12). One of the officers testified that at the time of the search he thought he had probable cause to believe a felony had been committed (St. 16). The trial court held:

> "From the evidence, I feel that there were two things, the credit card and likewise the price tags that Officer Burt had in plain view. From those, plus the inventory rule, I do feel there was probable cause. Accordingly, the motion to suppress is denied." (St. 32)

In any event, there is no constitutional justification for this forbidden intrusion into the privacy of the Petitioner's affairs to protect the Petitioner when he has not sought that protection or consented to the so-called protective measures employed by the police.

On June 19, 1972 this Court in *U.S. v. U.S. District Court, supra,* reaffirmed the Fourth Amendment holding of *Coolidge, supra,* in an Opinion written by Justice Powell and concurred in by all other members of the Court considering the case except Justice White who concurred on statutory and not constitutional grounds.

Justice Powell clearly and without equivocation announced for the Court the ruling that searches and seizures may not be justified under the Fourth Amendment without advance judicial approval through the warrant procedures, unless exigent circumstances render it impracticable to apply for a warrant in advance of the search and seizure. Quotations from this Opinion follow:

"Though the Fourth Amendment speaks broadly of 'unreasonable searches and seizures,' the definition of 'reasonableness' turns, at least in part, on the more specific commands of the warrant clause. Some have argued that 'the relevant test is not whether it was reasonable to procure a search warrant, but whether the search was reasonable,' *United States v. Rabinowitz*, 339 U.S. 56, 66 (1950). This view, however, overlooks the second clause of the Amendment.

. . .

. . . this Court 'has never sustained a search upon the sole ground that officers reasonably expected to find evidence of a particular crime and voluntarily confined their activities to the least intrusive means consistent with that end.' *Katz, supra*, at 356-357. The Fourth Amendment contemplates a prior judicial judgment, not the risk that executive discretion may be reasonably exercised. This judicial role accords with our basic constitutional doctrine that individual freedoms will best be preserved through a separation of powers and division of functions among the different branches and levels of Government. . . Prior review by a neutral and detached magistrate is the time tested means of effectuating Fourth Amendment rights. *Beck v. Ohio*, 379 U.S. 89, 96 (1964).

This Court also explained the basis of the "exceptions" to the warrant requirement in terms which do not permit a so-called inventory search. In doing so, the Court stated as follows:

"It is true that there have been some exceptions to the warrant requirement. *Chimel v. California*, 395 U.S. 752 (1969); *Terry v. Ohio*, 392 U.S. 1 (1968); *McDonald v. United States*, 335 U.S. 451 (1948); *Carrol v. United States*, 267 U.S. 132 (1925). But those exceptions are few in number and carefully delineated. *Katz, supra*, at 357; in general they serve the legitimate needs of law enforcement officers to protect their own well-being and preserve evidence from destruction. Even while carving out those exceptions, the Court has reaffirmed the principle that the 'police must, whenever practicable, obtain advance

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judicial approval of searches and seizures through the warrant procedure.' *Terry v. Ohio, supra* at 20; *Chimel v. California, supra*, at 762." (pp. 3137, 3138. Footnotes omitted)

It is respectfully submitted that the decision below erroneously held that inventory searches are an exception to the warrant requirement of the Fourth Amendment to the United States Constitution made applicable to the states through the Fourteenth Amendment.

2. This Case Involves a Question of Exceptional Importance

This Court has consistently recognized that the Fourth Amendment is "a valued part of our constitutional law for decades" and "an important working part of our machinery of government, operating as a matter of course to check the 'well intentioned but mistakenly overzealous executive officers who are a part of any system of law enforcement.'" *U.S. v. U.S. District Court for the Eastern District of Michigan, Southern Division, supra*, quoting from *Coolidge v. New Hampshire*, 403 U.S. 443, 491, 20 L.Ed.2d 564, 91 S. Ct. 2022 (1971).

This Court should accept review of this case so that Federal and state courts and Federal and state law enforcement officials might be able to determine the propriety of so-called inventory searches and seizures. The settlement of this issue would be of immeasurable benefit to individual citizens and Federal and state courts and Federal and state law enforcement officials.

3. This Case Should Be Heard With *Cady v. Dombrowski*, Docket No. 72-586

This Court on December 11, 1972 granted certiorari in *Cady v. Dombrowski*, Docket No. 72-586. The first two

questions in *Cady* raise the issue of the constitutional validity of a warrantless inventory search of the trunk of a vehicle in police impound. This question is the same as the one presented in the case at bar. In *Cady*, however, the complained of warrantless search was preceded by a search with a warrant. Thus, this Court might dispose of *Cady* by finding a second warrantless search valid because of the finding of probable cause in connection with the issuance of the search warrant for the first search of the trunk. If the Court so finds, *Cady* will not necessarily decide the issue of the validity of a warrantless inventory search. If this Court grants certiorari in the case at bar, the constitutional question as to the validity of a warrantless inventory search must be decided. Petitioner is filing simultaneously with the filing of this Petition for Writ of Certiorari a Motion seeking this Court's permission to argue this case together with *Cady v. Dombrowski.*

It is respectfully submitted that granting of certiorari in this case will permit the Court to decide clearly the inventory search issue without appreciably adding to any Court backlog if this case and *Cady* are argued together.

VII.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

LAW OFFICES OF MALCOLM L. EDWARDS
By MALCOLM L. EDWARDS
Attorneys for Petitioner

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APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, *Respondent,* v. CURTIS THOMAS, *Appellant.*	No. 878-I Division I Panel II

SWANSON, J.—Defendant Curtis Thomas appeals from a conviction and sentence for grand larceny by possession. Defendant first contends that the trial court erred in admitting four stolen[1] ladies' suits into evidence. His claim of error is based on the contention that the merchandise found by the police in the trunk of his car, which furnished the basis for the larceny by possession charge, was the product of an illegal, warrantless search.

It is not disputed that defendant Thomas was legally arrested for a traffic violation in the city of Seattle at approximately 12:30 a.m. A credit card bearing a name other than that of the defendant, or of either of the two passengers in his car, was observed on the dashboard by one of the police officers. The police also noticed numerous jewelry price tags in the car. The police officers testified that because neither passenger had a valid driver's license and the defendant was in custody, they decided to impound the vehicle and tow it to a parking lot for storage. Prior to doing so the officers searched the vehicle at the scene and found four new ladies' double knit suits in the trunk.

1. Defendant concedes in his brief on appeal that admissible evidence established that the ladies' suits, exhibits 2 through 7, were stolen property.

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Was the trial court correct in determining that the on-the-scene search of defendant's vehicle was a proper inventory search as defined in *State v. Montague*, 73 Wn.2d 381, 438 P.2d 571 (1968), and *State v. Jones*, 2 Wn. App. 627, 472 P.2d 402 (1970)? If it was a proper inventory search and not a general exploratory search, the trial court must be upheld.

It is well established that it is reasonable and necessary to search a vehicle and inventory its contents prior to having the vehicle towed to a parking lot for safekeeping. Such an inventory is necessary to protect the owner of the car, and the police, and the towing company from claims and loss of property. The controlling rule is well stated in *Montague*, 73 Wn.2d at 385:

> When, however, the facts indicate a lawful arrest, followed by an inventory of the contents of the automobile preparatory to or following the impoundment of the car, and there is found to be reasonable and proper justification for such impoundment, and where the search is not made as a general exploratory search for the purpose of finding evidence of crime but is made for the justifiable purpose of finding, listing, and securing from loss, during the arrested person's detention, property belonging to him, then we have no hesitancy in declaring such inventory reasonable and lawful, and evidence of crime found will not be suppressed.

See State v. Jones, supra, decided after *Chimel v. California*, 395 U.S. 752, 23 L.Ed.2d 685, 89 S. Ct. 2034 (1969), and which followed the rule announced in *Montague*.

A review of the record supports the trial court's determination that it was necessary to prepare an inventory of the contents of the automobile on the scene inasmuch as the defendant was in custody and his passengers lacked

valid driver's licenses and so could not be authorized to take possession of the vehicle and drive it away. It is unreasonable and impracticable to require police officers to stand guard over a vehicle stopped on one of the public thoroughfares in metropolitan Seattle at 12:30 in the morning and await the arrival of a search warrant before removing the vehicle from the streets. Further, the trial court properly could find from the officers' testimony that the decision to search the vehicle was not made to discover evidence of other crimes but for the primary purpose of making a list of all the property of value located within the automobile. It was reasonable to conduct a thorough search of the defendant's vehicle when price tags were noticed in the interior of the car, which would lead a reasonable person to conclude that valuable merchandise might be located elsewhere, including the trunk. We conclude that the search made in this case was not a general exploratory search, but a proper "inventory search," reasonable under the circumstances.

Defendant also contends that the state failed to prove his possession of stolen goods in excess of $75 in value, and therefore he could not be guilty of grand larceny as defined in RCW 9.54.090(6). Defendant points to the absence of any evidence to show that he acquired the ladies' suits at one time. He argues that if he obtained them at different times he could only be charged with petit larceny because the value of each item was less than $75. He relies upon *State v. Vining*, 2 Wn. App. 802, 808, 472 P.2d 564 (1970), to support his contention. It is stated in *Vining*:

> Where property is stolen from the same owner and from the same place by a series of acts there may be

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> a series of crimes or there may be a single crime, depending upon the facts and circumstances of each case. If each taking is the result of a separate, independent criminal impulse or intent, then each is a separate crime, but, where the successive takings are the result of a single, continuing criminal impulse or intent and are pursuant to the execution of a general larcenous scheme or plan, such successive takings constitute a single larceny regardless of the time which may elapse between each taking.

Vining is inapposite. The defendant in that case was charged with grand larceny under RCW 9.54.010(3) (Embezzlement). Here, the defendant Thomas was charged under RCW 9.54.010(5) with receiving, concealing, or withholding four ladies' suits with knowledge that they had been stolen, when he was stopped on April 22, 1970, by the police officers. Whether he obtained the goods by a series of thefts or received them item by item from the thief or burglar is unimportant. What is important is the total value of all the property in his possession when arrested. The undisputed testimony supports the jury's finding that the property possessed by the defendant on April 22, 1970, totaled more than $75.

Pursuant to RCW 2.06.040, this opinion will not be published.

Judgment affirmed.

/s/ SWANSON, J.

/s/ FARRIS, A.C.J.

WE CONCUR:

/s/ PEARSON, J.

APPENDIX B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, *Plaintiff,* v. CURTIS THOMAS, *Defendant.*	No. 54535 MOTION AND AFFIDAVIT TO SUPPRESS EVIDENCE

COMES NOW JACK E. TANNER, attorney of record for the above-named defendant, and moves the Court for an Order suppressing any and all evidence herein. That this Motion is supported by the sub-attached Affidavit.

/s/ JACK E. TANNER
Jack E. Tanner
Attorney for Defendant

STATE OF WASHINGTON
COUNTY OF KING } ss.

JACK E. TANNER, being first duly sworn upon oath, deposes and says:

THAT he makes this Affidavit in support of a Motion to suppress evidence herein. Affiant further states that on April 22, 1970, at the time of the arrest of the defendant, the arresting police officer had no probable cause to believe that the defendant had committed a felony, nor did they have any lawful reason to search the trunk of defendant's vehicle; therefore, any and all evidence to be presented by the State against the defendant should be suppressed.

/s/ JACK E. TANNER
Jack E. Tanner
Attorney for Defendant

SUBSCRIBED and SWORN to before me this 14 day of September, 1970.

/s/ illegible signature
Notary Public in and for the State of Washington, residing at Issaquah

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APPENDIX C

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, *Plaintiff,* v. CURTIS THOMAS, *Defendant.*	No.54535 JUDGMENT AND SENTENCE

The Prosecuting Attorney with the defendant CURTIS THOMAS and counsel Jack E. Tanner came into Court. The defendant was duly informed by the Court of the nature of the information found against him for the crime of GRAND LARCENY committed on or about the 22nd day of April, 1970, of his arraignment and plea of "Not guilty of the offense charged in the information," of his trial and the verdict of the Court on the 29th day of September, 1970, "guilty of the crime of GRAND LARCENY.

The defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, to which he replied he had none.

And no sufficient cause being shown or appearing to the Court, the Court renders its judgment: That whereas the said defendant having been duly convicted on September 29, 1970 in this Court of the crime of GRAND LARCENY it is therefore ORDERED, ADJUDGED and DECREED that the said defendant is guilty of the crime of GRAND LARCENY and that he be sentenced to imprisonment in such penal institution or correction facility, under the jurisdiction and supervision of the Department of Social and Health Services, Division of Institutions, as the Secretary of the Department of Social and Health Services shall deem appro-

priate pursuant to the provisions of RCW 72.13.120, for a maximum term of not more than FIFTEEN (15) years, and a minimum term to be fixed by the Board of Prison Terms and Paroles.

Appeal Bond is set in amount of Twenty Thousand Dollars ($20,000.00)

The defendant is here by remanded to the custody of the Sheriff of King Conty to be by him detained until called for by the transportation officers of the Department of Social and Health Services, Division of Institutions, authorized to conduct him to the Washington Corrections Center.

DONE IN OPEN COURT this 30th day of November, 1970.

/s/ HORTON SMITH
Judge

Presented by:

/s/ STUART A. COHEN
Deputy Prosecuting Attorney

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APPENDIX D

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, *Respondent,* v. CURTIS THOMAS, *Appellant.*	No. 879-I ORDER DENYING PETITION FOR REHEARING

The court having considered the appellant's petition for a rehearing herein and being of the opinion that it should be denied; Now, therefore

IT IS ORDERED that the petition be and it is hereby denied.

Dated this 5th day of September, 1972.

By the Court:

/s/ JEROME FARRIS
Acting Chief Judge

APPENDIX E

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, *Respondent,* v. CURTIS THOMAS, *Appellant.*	No. 42573 ORDER DENYING PETITION FOR REVIEW

The Court having considered the petition for review of the decision of the Court of Appeals in this cause,

It is ordered that the petition be and it is hereby denied.

Dated this 26th day of October, 1972.

By the Court:

/s/ ORRIS L. HAMILTON
Chief Justice

6 Wn. App. 1019

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APPENDIX F

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, *Respondent,* v. CURTIS THOMAS, *Appellant.*	REMITTITUR No. 879-I KING COUNTY No. 54535

The State of Washington to: the Superior Court of the State of Washington in and for King County

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on May 30, 1972, became the final judgment of this court in the above entitled case on November 20, 1972. This cause is remitted to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule 55 on Appeal, costs are taxed as follows:

Seventy and 50/100 Dollars ($70.50) in favor of Respondent and against Appellant. The petition for rehearing was denied by an order dated September 5, 1972; the petition for review was denied by an order dated October 26, 1972.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 20th day of November, A.D. 1972.

/s/ JOSEPH A. THIBODEAU
Joseph A. Thibodeau
Clerk of the Court of Appeals,
State of Washington, Division I.

cc: Mr. Howard T. Manion

The Honorable Christopher T. Bayley
King County Prosecuting Attorney
Mr. Paul J. Bernstein, Deputy
Mr. Curtis Thomas
c/o Mr. Howard T. Manion
Chairman, Board of Prison Terms & Paroles
The Honorable William M. Lowrey
Mr. Richard F. Jones

[SEAL]

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APPENDIX G

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, *Plaintiff,* v. CURTIS THOMAS, *Defendant.*	No. 54535 AFFIDAVIT OF ROSS CARMEN

STATE OF WASHINGTON } ss.
COUNTY OF KING }

ROSS CARMEN, being first duly sworn on oath, deposes and says:

That he is a police officer for the Seattle Police Department, assigned to the Patrol Division; that on or about the 22nd of April, 1970, at about 12:30 A.M., your affiant stopped the defendant, Curtis Thomas, for going 45 MPH in a 30 MPH zone; that a subsequent record check by one of the other officers at the scene disclosed several outstanding traffic warrants in the name of the defendant; that the two passengers in the defendant's vehicle did not have valid driver's licenses;

That your affiant determined on the basis of the foregoing that the vehicle had to be impounded and directed Officers Burt and Jacobson to make an inventory search prior to impound; that your affiant and officer Krueger transported the defendant to the city jail;

That your affiant subsequently went to Cordes Towing lot at 610 5th Avenue, Seattle, Washington, where the defendant's car had been towed and seized those items inventoried at the scene of the traffic stop prior to impound and took them to the Seattle Police Department property room for safekeeping; that among other valuables seized, your affiant seized a credit card in the name of Thomas F. Brownhill and four ladies double knit suits bearing a Ngai Shing label.

/ s / Ross H. Carmen

Subscribed and Sworn to before me this
22 day of September, 1970:

/s/ Mary Jo Jaklewicy
Notary Public in and for the State
of Washington, residing at Seattle.

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IN THE

Supreme Court of the United States

October Term, 1972

No. 72-1023

CURTIS THOMAS,
Petitioner,

v.

STATE OF WASHINGTON,
Respondent.

RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF *CERTIORARI* TO THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION ONE

CHRISTOPHER T. BAYLEY
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Attorney for Respondent

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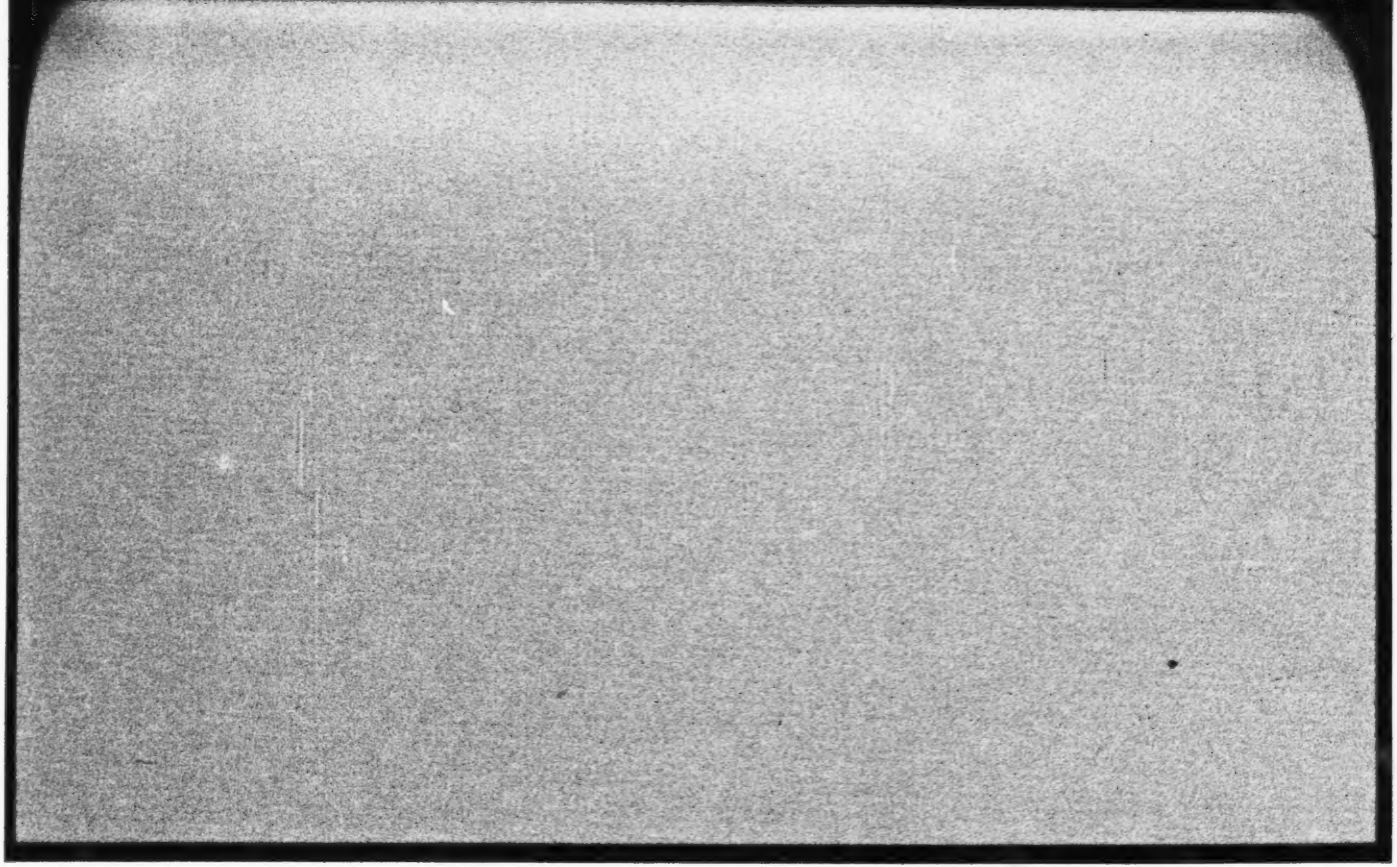

TABLE OF CONTENTS

	Page
I. Statement of the Case	1
A. Additional Factual Background	1
II. Reasons For Denying the Writ	2
A. Vehicle Impounds, and Inventories Made Pursuant to Such Impounds, Are Not, Without Additional Factors, Unreasonable Searches as Prohibited by the Fourth Amendment	2
III. Conclusion	5

TABLES OF AUTHORITY

Table of Cases

Cabbler v. Virginia, 184 S.E.2d 781 (S. Ct. of Va. 1971) *cert. den.* 405 U.S. 1073, 92 S. Ct. 1501, 31 L. Ed. 2d 807 4-5

Coolidge v. New Hampshire, 403 U.S. 443, 29 L. Ed. 2d 564, 91 S. Ct. 2022 (1971) 2, 3, 4

Harris v. United States, 390 U.S. 234, 88 S. Ct. 992, 19 L. Ed. 2d 1067 (1968) 4

United States v. Edwards, 441 F.2d 749 (5th CA, 1971) 4

United States v. Mitchell, 458 F.2d 960 (9th CA, 1972) 4

United States v. Pennington, 441 F.2d 249 (5th CA, 1971) 4

Constitutional Provisions

United States Constitution, Amendment IV 2, 3

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IN THE

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October Term, 1972

No. .....

CURTIS THOMAS,
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STATE OF WASHINGTON,
Respondent.

RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF *CERTIORARI* TO THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION ONE

The respondent, the State of Washington, respectfully urges that a Writ of Certiorari be denied with respect to the Judgment and Opinion of the Court of Appeals of the State of Washington, Division I, in that Court's Docket No. 879-I, which opinion affirmed appellant's conviction of grand larceny.

I.

STATEMENT OF THE CASE

A. Additional Factual Background

The respondent would join with petitioner's statement with some exception. The petitioner implies through omission of relevant facts that the petitioner was taken into custody and his vehicle impounded on the basis of a speeding violation for going 45 mph in a 30 mph zone. This is

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not the case. The initial contact with the petitioner was due to the traffic violation observed by the officers. If there had been nothing more, a citation would have been issued and the petitioner left free to continue on his way.

In this case, upon stopping the petitioner, the officers made a routine check of the petitioner's name through police radio and determined that the appellant had *several outstanding traffic warrants* for his arrest due to failure to honor previous traffic citations (St. 3-5). It was on the basis of these valid warrants of arrest, *not* the original speeding citation, that the officers were *required* to take the petitioner into custody (See Affidavit of Ross Carmen, Appendix G, pages A-12 to A-13, petitioner's brief). As the other passengers had no valid drivers licenses, and as the vehicle was stopped on a major thoroughfare, regular police procedures were to impound and inventory the vehicle.

II.

REASONS FOR DENYING THE WRIT

A. Vehicle Impounds, and Inventories Made Pursuant to Such Impounds, Are Not, Without Additional Factors, Unreasonable Searches as Prohibited by the Fourth Amendment

Petitioner incorrectly cites *Coolidge v. New Hampshire*, 403 U.S. 443, 29 L. Ed. 2d 564, 91 S. Ct. 2022 (June 21, 1971) as being "nearly on all fours factually and legally with the case at bar" (Petitioner's br. p. 7). In *Coolidge*, the search was for evidence of a felony, to-wit: murder, as a result of an investigation covering an extended period of time. At the time the search for this evidence occurred, the vehicle in question was parked in the defendant's driveway. In *Coolidge*, the court first determined that a search warrant obtained to search the vehicle for evidence

of the felony was invalid. After making that determination, the court discussed and rejected three possible theories of searching the vehicle for evidence of a crime; (1) as "incident" to a valid arrest; (2) as the result of probable cause to believe the vehicle contained contraband; and (3) as an instrumentality of a crime. The court never considered or dealt with the issue of impounds and inventories pursuant to such impounds. This is because the factual pattern of *Coolidge* clearly indicated a *search for evidence of a crime* when there was more than ample time prior to the search to obtain a warrant.

In this case, petitioner Thomas was stopped for speeding, not as the result of any crime investigation. The petitioner was arrested and booked as the result of outstanding traffic warrants for his arrest. The officers had no option but to arrest the petitioner upon learning of the warrants. Furthermore, the vehicle was stopped on a thoroughfare and it was necessary to remove the vehicle. Pursuant to that impound, an inventory was made of the contents of the vehicle prior to its being placed in the impound lot for safe keeping.

In an impound inventory, the officer is not searching for evidence of a crime. Rather, he is merely listing the valuables content of the vehicle pursuant to the impound so that any valuable property can be noted for protection, and so that the police department can be protected at a later time from claims of loss. In these situations, the inventory is not a *search* as envisioned by the Fourth Amendment. A search warrant prior to such an inventory would make no sense as one would not be in a position to specify what was being sought.

The Federal Courts have spoken on this issue since the

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Coolidge decision. In *United States v. Mitchell*, 458 F.2d 960 (9th CA, April, 1972), the United States District Court for the District of Montana, Billings Division, entered an order suppressing evidence and the government appealed. Factually, the defendant was an out-of-state motorist arrested on a speeding citation. Unable to raise the bail, he was confined to the city jail to await appearance in municipal court and pursuant to that arrest, his vehicle was impounded and inventoried. In reversing the order suppressing evidence, the court in *Mitchell* had this to say:

> The first issue is whether the actions of the patrolman were a search within the ambit of the Fourth Amednment. We note that there was no intent to discover evidence of crime. Rather this was responsible, indeed laudable, police conduct to protect the property of the owner of a lawfully impounded car. If valuable property had been left on the seat and floor of the car, plainly visible to anyone peering through the window, the danger of theft would have been substantial. Not surprisingly, it appears that the locking and securing of impounded cars, and the removal and inventory of valuable property in plain sight, are standard procedures. They certainly should be.
>
> These procedures protect not only the interests of the property owner but also those of the city against a claim that property in the car at the time of impounding "mysteriously disappeared" while the car was in the custody of the authorities.

Supra at 961. See also *Harris v. United States*, 390 U.S. 234, 88 S. Ct. 992, 19 L. Ed. 2d 1067 (1968); *United States v. Edwards*, 441 F.2d 749 (5th CA, April 1971); *United States v. Pennington*, 441 F.2d 249 (5th CA, April 1971).

Furthermore, the United States Supreme Court has, since the *Coolidge* decision, considered and denied certiorari on the inventory impound question. *Cabbler v. Virginia*, 184

S.E.2d 781 (S. Ct. of Va., Nov. 1971); *cert. den.* 405 U.S. 1073, 92 S. Ct. 1501, 31 L. Ed. 2d 807. In *Cabbler*, the court held the following:

> The Fourth Amendment does no preclude the states from developing workable rules governing arrests, searches and seizures to meet the practical demands of effective criminal investigation and law enforcement in the states, provided that those rules do not violate the constitutional proscription of unreasonable searches and seizures and the concomitant command that evidence illegally seized is inadmissible. *Ker v. California*, 374 U.S. 23, 34, 83 S. Ct. 1623, 10 L. Ed. 2d 726 (1963); *Sibron v. New York*, 392 U.S. 40, 60-61, 88 S. Ct. 1889, 20 L. Ed. 2d 917 (1968).
>
> Upon the facts before us we hold that the policy established by the Roanoke Police Department and the procedure followed in connection therewith are such reasonable rules governing arrests as were contemplated in *Ker* and *Sibron*. Such a policy is in accord with the public policy of the Commonwealth, is not violative of the defendant's Fourth Amendment rights and serves the best interest of the property owner by protecting and safeguarding the property in his possession at the time of his arrest.

Supra at 783.

There being no legal issues for the court to decide in the instant case, appellant's petition for certiorari should be denied.

III.

CONCLUSION

For the above-stated reasons, petitioner's conviction should stand and his petition of Writ of Certiorari should be denied.

Respectfully Submitted,

CHRISTOPHER T. BAYLEY
King County Prosecuting Attorney
Attorney for Respondent

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